

NORTH CAROLINA
DURHAM COUNTY

LAND LEASE BETWEEN THE CITY OF DURHAM
AND NEW CINGULAR WIRELESS PCS, LLC

THIS LEASE AGREEMENT is made and entered into this the _____ day of _____ 2016, by and between the City of Durham, a North Carolina municipal corporation, (“Landlord”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive, Atlanta, GA 30324 (“Tenant”).

1. **PREMISES AND TERM.** Landlord, in consideration of the rent to be paid and of the covenants, agreements, and conditions to be kept and performed by the Tenant, hereby leases to the Tenant the following premises:

BEING a portion of Durham County Parcel Number 141733, and

BEING the area shown and delineated as the “Lease Parcel Area” on the Lease Exhibit of “Pipeline” Crown Castle Site #812834 dated February 25, 2003 attached hereto (“Premises”) and made a part hereof (“Lease Exhibit”), such Lease Parcel Area being a portion of the real property of the City of Durham, as described in that certain deed recorded in Book 334, Page 693, Durham County Registry, North Carolina.

TOGETHER WITH a twenty foot (20’) nonexclusive easement for utilities and for ingress, egress and regress for pedestrians and vehicular access to the Lease Site, as shown and delineated as the “Access and Utility Easement” on the Lease Exhibit.

TOGETHER with a nonexclusive right and easement, at all times, (i) pedestrian ingress and egress between the Lease Site and Farrington Road, (ii) installation and maintenance of utility wire, cables, conduits, and pipes, and equipment, over, under, or along the existing entrance(s), driveway(s), landscaped area(s), and open area(s) located on the aforesaid property that is described in Book 334, Page 693, and (iii) ingress and egress by motor vehicle, including trucks, over the portions of the following that are designed for motor vehicle traffic: existing entrance(s) and driveway(s) located on the aforesaid property described in Book 334, Page 693, but only to the extent that the travel on said locations is reasonably necessary to go between the Lease Site and Farrington Road or to carry out other rights granted by this Agreement.

For further description see map showing “City Tract No. 760”, dated January 23, 1976, Plat Book 101, Page 163.

TO HAVE AND TO HOLD THE PREMISES for a term of ten years commencing on the 15th day of June, 2016, and ending on the 14th day of June, 2026.

2. USE OF PREMISES: Tenant shall not use the Premises for any purpose other than as follows: constructing, maintaining and operating a communications facility and uses incidental thereto, which may consist of such buildings as are necessary to house telecommunications equipment and related office space, a free standing monopole or three sided antenna structure not to exceed a height of 199 feet, and a security fence of chain link or comparable construction that must be placed around the perimeter of the Leased Premises (the "Communications Facility"). All improvements to the Leased Premises necessary for the Tenant's use shall be made at Tenant's expense. The subleasing and licensing of all or any portion of the Premises and/or Communications Facility for communications purposes allowed under this Lease is a permitted use by Tenant.
3. FACILITY SHARING. (a) The Landlord wishes to promote and encourage the sharing of communications facilities. Therefore, all improvements constructed by the Tenant on the Premises shall be of sufficient load-bearing capacities, sufficient signal, and sufficient size so as to accommodate the use of the tower by entities specified by the Tenant and licensed operators operating communications facilities substantially similar to those of the Tenant on the Premises. In determining the sufficiency of said capacities, signal, and size, the Tenant may assume that other "licensed operators" will require the load-bearing capacities, size, and signal that are average for such operators on similar towers that are in existence on the date that the Tenant completes construction of the tower on the Premises.

(b) If, during the term of this Lease, Tenant unreasonably refuses to enter into an agreement with a "licensed" willing and able person, firm, or corporation, by which Tenant would act as sublessor or licensor to sublease or license the right to construct and operate communications facilities on the tower on the Premises, Tenant shall pay Landlord as follows: an amount equal to the greater of five percent (5%) of (i) the gross monetary rent that the proposed agreement would have provided to the Tenant (or from any said sublessee or licensee of the Tenant by reason of the sublease or license) plus the fair market value of the nonmonetary consideration, or (ii) the gross annual fair market rent or consideration that Tenant could have received for the sublease or license. For purposes hereof, fair market rent shall be the average rent being paid for similar leased or subleased space on similar towers located in the Raleigh / Durham / Research Triangle area for a similar use as that intended by such prospective subtenant. Making such a payment to Landlord will suspend, for a twelve month period following the date of the unreasonable refusal, Tenant's obligation to enter into agreements to sublease or license rights on the tower with respect to the portion of the Premises that the proposed lease or license should have occupied. Following the expiration of the twelve month period, Tenant's obligation under this Section 2(b) shall resume with respect to said portion of the Premises. Tenant's refusal to enter into any sublease will not be unreasonable for purposes of this section, if Tenant determines (and is able to document

the basis for such determination) that: (i) the prospective subtenant's intended use of the subleased space would reasonably be expected to interfere with the use of the tower and/or the Premises by Tenant or any other then-existing subtenant; and (ii) the prospective subtenant's intended use exceeds the then-available load-bearing capacities, size and signal of the tower.

4. RENT: (a) Base Rent: Tenant agrees to pay Landlord rent for the Premises of THIRTY-NINE THOUSAND DOLLARS AND NO CENTS (\$39,000.00) per year for year one (1) of its leasehold. The rent payment amount will escalate 3% each year on the anniversary date of this Lease for years two (2) through ten (10) of the leasehold. The first annual installment is payable in advance upon execution of this Lease, subsequent annual installments are due on the anniversary date of the Lease. Any rental payments made ten (10) days after the due date shall bear an additional charge of five (5%) percent of the current annual rent as and for additional rent. The rent shall be paid to Landlord by mailing it to City of Durham, General Services Department, Real Estate Division, 101 City Hall Plaza, Durham, North Carolina 27701. The rent may also be hand-delivered to the General Services Department, Real Estate Division at 2011 Fay Street, Durham, NC 27704.

(b) Percentage Rent: Tenant shall pay Landlord an amount equal to twenty percent (20%) of all gross Sublease Rents flowing to the Tenant or from any sublessee or licensee of the Tenant that may be from or in connection with any subleases or licenses of any interest in the Premises. If any consideration flowing to the Tenant or from any said sublessee or licensee of the Tenant by reason of the sublease or license is nonmonetary, the Sublease Rent shall be the greater of (i) the nonmonetary rent flowing to the Tenant or from any said sublessee or licensee of the Tenant by reason of the sublease or license plus the fair market value of the nonmonetary consideration, or (ii) the fair market rent that Tenant could have received for the sublease or license. Within 30 days of each request, the Tenant shall make available for inspection and copying by the Landlord the subleases, licenses, and such other records as the Landlord reasonably requests from time to time in order to verify the Tenant's compliance with this Section 4(b).
5. ASSIGNMENT AND SUBLETTING: This Lease may be sold, assigned or transferred at any time by Tenant to Tenant's parent company or any affiliate or subsidiary of Tenant or its parent company, to any successor entity with or into which Tenant is sold, managed or consolidated, or to any entity resulting from a reorganization of Tenant or its parent company, or to New Cingular Wireless PCS, LLC, or its parent company or any affiliate or subsidiary of New Cingular Wireless PCS, LLC or its parent company, provided Landlord is notified in writing prior to the sale, assignment or transfer, subject to the terms hereof. Otherwise, Tenant may not assign this Lease, or any interest therein without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. Tenant may sublease all or any portion of the Premises and/or communication facility, but will provide notice to Landlord of any such sublease. Notwithstanding any assignment of this Lease or the subletting of the Premises or of any

portion thereof, Tenant shall continue to be liable for the performance of the terms, conditions and covenants of this Lease including the payment of rent.

6. ACCESS TO PREMISES: Landlord or Landlord's authorized agent or agents, shall have the right to enter upon the Premises at all reasonable hours, provided Landlord gives Tenant reasonable prior notice of Landlord's intention to enter the Premises, and Landlord is accompanied by an authorized representative of Tenant, for the purpose of inspecting the same, preventing waste, or making such repairs as the Landlord may consider necessary. If Tenant does not provide an authorized representative within five (5) days after the Landlord has requested to inspect the Premises, the Landlord may enter the Premises without an authorized representative of the Tenant, and in case of an apparent emergency the Landlord may enter the Premises immediately without prior notice.
7. DEFAULT: Tenant covenants and agrees that if any default is made in the payment of the rent hereunder and if such default continues for thirty (30) days; or if any default is made by the Tenant in the performance or observance of any other covenants or agreements herein contained and if Tenant fails to remedy any such default within thirty (30) days after the date of mailing written notice by the Landlord to Tenant; or if the Premises are abandoned by Tenant; or if a Petition in Bankruptcy is filed by or against the Tenant and the same is not dismissed within a reasonable time; then, in any of said events, the Landlord may at any time (i) terminate this Lease and cause the Tenant's estate to be ceased, or (ii) terminate the Tenant's right to possession of the Premises without causing the Tenant's estate to be ceased or terminating this Lease. In either event, the Tenant shall deliver possession of the Premises to the Landlord. In addition the Landlord may reenter and take possession in accordance with legal procedures; or Landlord may at Landlord's option take any other steps or proceedings to enforce the terms and provisions of this Lease as are provided by law.
8. ATTORNEY'S FEES: In the event it shall become necessary for either Landlord or Tenant at any time to institute any legal action or proceedings of any nature for the enforcement of this Lease, or of any of the provisions hereof, and to employ an attorney at law therefore, the prevailing party shall be entitled to recover from the other all costs including a reasonable attorney's fee incurred by said prevailing party in such action or proceeding.
9. UTILITIES. The Tenant shall pay all charges for utilities, including oil, gas, electricity, water, sewer, garbage pickup, cable, and telephone.
10. LIEN ON PROPERTY: In the event of a default by Tenant, as set forth in Section 7 above, the Landlord shall have a special lien upon the property of the Tenant located in or on the Premises as security for any moneys due the Landlord under the terms of this Lease, including rent for the unexpired term.

11. MAINTENANCE AND REPAIR: Tenant shall maintain the area of Premises, including any access and utility easements, in good condition and upon termination of this Lease, shall deliver up the Premises and the access and utility easements in good repair and condition, reasonable wear and tear and damages caused by fire, tornado, or other casualty excepted, if the fire or other casualty is not the Tenant's fault.
12. ALTERATIONS AND IMPROVEMENTS: Tenant, with Landlord's written consent, may make any alterations or improvements to the Premises at its expense, so long as said alterations and improvements are made in conformity with applicable laws, ordinances, rules and regulations of the governmental unit where the property is located and so long as said alterations or improvements do not interfere with the Landlord's operation of any of Landlord's facilities on the Property.
13. REMOVAL OF IMPROVEMENTS: Title to all improvements constructed or installed by Tenant on the Premises shall remain in Tenant, and all improvements constructed or installed by Tenant shall at all times be and remain the property of Tenant, regardless of whether such improvements are attached or affixed to the Premises. Tenant, upon termination of this Lease, shall, within a reasonable period, remove all improvements, constructed or installed on the Property by Tenant and restore the Premises to its original condition, reasonable wear and tear excepted. At Landlord's option, upon termination of this Lease and upon Landlord's advance written notice to Tenant, Tenant will leave the foundation and security fence on the Premises to become the property of Landlord. If in order to remove any items pursuant to this Section 13, Tenant remains on the Premises after termination of this Lease, the leasehold shall be extended on a month-to-month basis, and Tenant shall pay rent at the then-existing monthly rate, or on the existing monthly prorata basis if based upon a longer payment term, until such time as the removal is completed. However, upon written notice to Tenant during such hold-over term for improvement removal, Tenant shall complete removal no later than sixty (60) days from such notice.
14. INDEMNIFICATION: (a) To the maximum extent allowed by law, Tenant shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Lease or out of the use or occupancy of the Premises pursuant to this Lease, including for Environmental Contamination. In performing its duties under this subsection "a", Tenant shall at Tenant's sole expense defend Indemnitees with legal counsel reasonably acceptable to Landlord.

(b) Definitions. As used in subsections (a) and (d) of this section – "Charges" means claims, judgments, cost, damages, losses, demand, liabilities, obligations, fires, penalties, settlements, and expenses (included within "Charges" are interest and reasonable attorney's fees assessed as part of any such item. "Environmental Contamination" means petroleum products (including oil, gasoline, and kerosene), hazardous wastes, hazardous substances, hazardous materials, toxic substances, toxic wastes, hazardous air pollutants, and toxic pollutants, as those terms are used in any federal, state, or local laws, rules, regulations, codes, and ordinances, as amended from

time to time. "Indemnitees" means Landlord and its officers, officials, independent contractors, agents, and employees, and does not include Tenant.

(c) Limitations of Tenant's Obligation. Subsection "a" of this section shall not require Tenant to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

(d) Landlord shall defend, indemnify, and save harmless Tenant, its general partners, officers, officials, independent contractors, agents, and employees, from and against all Charges arising from Environmental Contamination to, on, under, or around the Premises, except for such Environmental Contamination caused in whole or in part by Tenant, its general partners, officers, officials, independent contractors, agents, and employees.

15. TAXES Tenant shall be responsible for filing and paying any and all property taxes levied or assessed against the improvements constructed by Tenant on the Premises. Any insurance that the Landlord may obtain on the Premises is for the benefit of the Landlord, not the benefit of the Tenant. Landlord shall not provide either liability insurance to protect Tenant or insurance against loss or damage to Tenant's property.
16. INSURANCE. Tenant agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following applicable coverage's and limits. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Tenant is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Tenant under this Contract.

Commercial General Liability – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

Additional Insured – Tenant agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read 'City of Durham as its interest may appear'.

Certificate of Insurance – Tenant agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage's, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Tenant's insurer. If Tenant receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Tenant agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham
Attn: Real Estate Manager/General Services Department/Real Estate Division
101 City Hall Plaza
Durham, NC 27701

17. FAILURE TO EXERCISE RIGHTS: It is agreed that Landlord's failure to require, or its waiver of, strict performance or observance of one or more of the covenants or conditions hereunder, or to exercise any remedy, privilege, or option herein conferred upon or reserved to the Landlord, shall not operate or be construed as a relinquishment or waiver for the future of such covenant or condition or of the right to enforce the same or to exercise such privilege, option or remedy, but the same shall continue in full force and effect. Without limiting the foregoing, it is agreed that the receipt by Landlord of rent, or of any other payment required to be made by Tenant, or any part thereof, shall not be a waiver of any other rents or payments then due, nor shall receipt, though with knowledge of the breach of any covenant or condition hereof, operate as or be deemed to be a waiver of such breach and no waiver by the Landlord or any of the provision hereof, or any of the Landlord's rights, remedies, privileges, or options hereunder, shall be deemed to have been made unless made in writing by the Landlord. If Landlord consents to the assignment of this Lease, no further assignment shall be made without the written consent of Landlord first obtained.
18. TERMINATION, CASUALTY, AND EMINENT DOMAIN. (a) If the term ends early at the request of the Landlord, and if Tenant has paid rent in advance, it shall be entitled to a prorata refund for the rent attributable to the time after the end of the term. (b) If an authority with the power of eminent domain acquires an interest in the Premises that substantially affects their use for Tenant's purposes, Tenant may, by sending notice to the Landlord within thirty (30) days of the taking of possession by the authority, terminate the term effective as of the date of the taking of possession by the authority, and if Tenant has paid rent in advance, it shall be entitled to a prorata refund for the rent attributable to the time after the date of the taking of possession by the authority. (c) Each subsection of this section is intended to be independent of the other subsections of this section.
19. TENANT'S TERMINATION RIGHT. Landlord shall cooperate with Tenant in its effort to obtain and maintain in effect all certificates, permits, licenses, and other approvals required by governmental authorities for Tenant's use of the Premises. If at any time during the term of this Lease, Tenant is unable to use the Premises for a Communications Facility in the manner intended by Tenant due to imposed zoning conditions or requirements, or in the event that any necessary certificate, permit, license or approval is finally rejected or any previously issued certificate, permit, license or approval is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental authority, or radio frequency propagation tests are found to be unsatisfactory so that Tenant, in its sole discretion, will be unable to use the Premises for

a Communication Facility in the manner intended by Tenant, Tenant shall have the right to terminate this Lease exercisable upon sixty (60) days written notice to Landlord, and delivery to Landlord of an early termination fee equal to the annual installment of rent applicable to the year immediately following the year in which Tenant elects to exercise the termination right provided herein, and all prepaid rents pertaining to the year in which Tenant elects to exercise such termination right shall be retained by Landlord.

20. EFFECTS ON OTHER RIGHTS. The Landlord shall not be liable for any loss or damage occurring to the personal property of Tenant, except through the intentional act of the Landlord, and except as otherwise provided by law or this Lease. Nothing in this Lease shall limit the City of Durham's governmental powers regarding the Premises, including eminent domain, zoning, subdivision, and police.
21. NOTICE: Any written demand which under the terms of this Lease or under any statute must or may be given or made by the parties hereto shall be in writing and may be given or made by mailing the same addressed to the respective parties as follows:

TO the Landlord: City of Durham
General Services Department, Real Estate Division
101 City Hall Plaza
Durham, North Carolina 27701

To the Tenant: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #368-035R; Cell Site Name: Pipeline
575 Morosgo Drive
Atlanta, GA 30324

With a copy to: New Cingular Wireless PCS, LLC
Attn: AT & T Legal Department-Network
Re: Cell Site #368-035R; Cell Site Name: Pipeline
208 South Akard Street
Dallas TX 75202-4206

The above addresses may be changed at any time by giving thirty (30) days prior written notice.

22. QUIET ENJOYMENT: Landlord hereby covenants that Tenant shall have the quiet enjoyment of the Premises upon the payment of the rents set forth herein and compliance with the other provisions of this agreement.
23. SIGNS: Tenant shall have the right to affix a sign on the Premises, provided that it conforms to the sign ordinance and the proper permit is obtained.
24. INTERPRETATION. Unless the context requires otherwise, the singular includes the plural, and vice versa. "Including" and "included" mean including or included but not

limited to. Section headings are not for interpretation of this Lease. In Section 1 (PREMISES AND TERM), if the period stated conflicts with the expiration date stated, the period shall control.

25. LEASE BINDING: This Lease shall be binding upon the parties hereto, their successors, heirs and assigns, and wherever used, the singular shall be considered a plural and pronouns shall be changed to neuter wherever the context so requires.

26. IRAN DIVESTMENT ACT CERTIFICATION. Licensee certifies that, if it submitted a successful bid for this Agreement, then as of the date it submitted the bid, Licensee was not identified on the Iran List. If it did not submit a bid for this Agreement, Licensee certifies that as of the date that this Agreement is entered into, Licensee is not identified on the Iran List. It is a material breach of this Agreement for Licensee to be identified on the Iran List during the term of this Agreement or to utilize on this Agreement any contractor or subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section -- "Iran List" means the Final Divestment List – Iran, the Parent and Subsidiary Guidance List – Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 143C-6A-4 of the N.C. Iran Divestment Act.

27. E-VERIFY REQUIREMENTS. (a) If this Agreement is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) Licensee represents and covenants that its contractors and subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (a) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (a) in entering into this Agreement. (b) If this Agreement is subject to NCGS 143-133.3, the Licensee and its contractors and subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

IN WITNESS WHEREOF, the parties executed this Lease as of the date written above.

ATTEST:

CITY OF DURHAM

City Manager

By _____ City Clerk

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT & T Mobility Corporation
Its: Manager

By: _____
Name: _____
Title: _____
Date: _____

STATE OF _____

COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: New Cingular Wireless PCS, LLC, a Delaware limited liability company,_____.

Date: _____

By: _____

Print Name: _____

Notary Public

My Commission Expires: _____

[SEAL OR STAMP]

